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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 IN RE: PHENYLPROPANOLAMINE
10 (PPA) PRODUCTS LIABILITY
11 LITIGATION,

MDL NO. 1407

12 This document relates to:

ORDER GRANTING DEFENDANT
DOUBLE QUICK, INC'S MOTION
TO DISMISS

13 George and Donna Campbell v.
14 Bayer Corporation, et al., No.
3-cv-2708

15 Double Quick, Inc. ("Double Quick") moves this court to
16 dismiss the claims of George and Donna Campbell pursuant to
17 Federal Rule of Civil Procedure 12(b)(6) for failure to state a
18 cause of action. Having reviewed the motion, the response filed,
19 and the reply thereto, the court hereby finds and rules as
20 follows:

21 Mr. Campbell alleges that he suffered a stroke following
22 ingestion of Alka-Seltzer Plus, a phenylpropanolamine ("PPA")-
23 containing product. Alka-Seltzer Plus is manufactured by Bayer
24 Corporation ("Bayer"). Mr. Campbell further alleges that he
25 purchased the Alka-Seltzer Plus product at Double Quick, a
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ORDER

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1 retailer.

2 Mr. Campbell originally filed his claim in the Circuit Court
3 of Bolivar County, Second Judicial District, Mississippi. The
4 action was removed to federal court on the basis of diversity of
5 citizenship and ultimately transferred to this court as part of
6 MDL 1407. In the complaint, Mr. Campbell alleges claims for
7 strict liability, negligence, breach of warranty, and negligent
8 misrepresentation. Mrs. Campbell alleges claims for loss of
9 consortium.

10 On December 1, 2003, plaintiffs filed a motion to remand the
11 case back to Mississippi state court. Bayer opposed the motion,
12 arguing that Double Quick had been fraudulently joined for the
13 purpose of defeating diversity jurisdiction. The court agreed and
14 on May 5, 2004 issued an order denying plaintiff's motion to
15 remand. In the order, the court held that plaintiffs had failed
16 to state a cause of action against Double Quick, and that the
17 failure is obvious according to the settled rules of Mississippi.
18 Double Quick now moves the court to dismiss plaintiffs' claims
19 against it.

20 This court has ruled on the legal issue of whether a claim
21 has been stated against Double Quick, and under the law of the
22 case doctrine, the court is precluded from reexamining the issue
23 absent a showing of substantially different evidence, of a change
24 in controlling authority, or that the decision was clearly
25 erroneous and would work a manifest injustice. Sentry Life Ins.

1 Co. v. Roberts, 86 F.3d 1163, 1996 WL 267326 (9th Cir. 1996) (law
2 of the case doctrine is intended to maintain consistency and
3 avoid reconsideration during a single lawsuit); Pit River Home
4 and Agr. Co-Op Ass'n. v. U.S., 30 F.3d 1088, 1096-97 (9th Cir.
5 1994) (law of the case ordinarily precludes a court from
6 reexamining an issue previously decided by the same court in the
7 same case): Moore v. James H. Matthews & Co., 682 F.2d 830, 833-
8 34 (9th Cir. 1982) (discretion of a court to review earlier
9 decisions should be exercised sparingly so as not to undermine
10 the salutary policy that underlies the law of the case rule). The
11 plaintiffs have made no such showing.

12 Based on the foregoing, the court GRANTS Double Quick's
13 motion to dismiss plaintiffs' claims pursuant to Federal Rule
14 12(b)(6) and hereby dismisses the claims against Double Quick
15 with prejudice.

16 DATED at Seattle, Washington this 26th day of July, 2005.

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19 BARBARA JACOBS ROTHSTEIN
20 UNITED STATES DISTRICT COURT JUDGE
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